(16,585.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 372.

THE CAPITAL TRACTION COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 In the Court of Appeals of the District of Columbia.

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY. } No. 632.

Supreme Court of the District of Columbia.

THE CAPITAL TRACTION COMPANY, Plaintiff,
vs.
CHARLES HOF, Defendant. } At Law. No. 40239.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition for Certiorari.

Filed September 8, 1896.

In the Supreme Court of the District of Columbia.

THE CAPITAL TRACTION COMPANY, Petitioner,
vs.
CHARLES HOF, Respondent. } At Law. No. 40239.

Petition for Certiorari.

To the supreme court of the District of Columbia:

Your petitioner, The Capital Traction Company, respectfully states as follows:

1.

Petitioner is a corporation, duly created by acts of Congress of the United States, with a capital of twelve million dollars, and owning and operating an extensive system of street railways in the District of Columbia.

2.

The respondent, Charles Hof, is an individual whose citizenship and residence are unknown to the petitioner, but who, on the 17th day of August, 1896, caused a summons to be issued by Lewis I. O'Neal, Esquire, one of the justices of the peace in and for the Dis-

2 trict of Columbia, summoning this petitioner to appear on the 20th day of August, 1896, at 1.30 o'clock p. m., "to answer unto the complaint of Charles Hof in a plea of damages of three hundred dollars;" that on said 20th day of August the matter was postponed until September 8th, 1896, at 3 o'clock p. m., at which time the attorney-at-law who appeared for said Hof, after the defendant (this petitioner) had put in its plea and issue had been joined thereon, demanded of said justice of the peace that such action be "tried by a jury;" whereupon said justice of the peace issued a *venire* to a constable commanding him to summon twelve "jurors" to be and appear before said justice on the 10th day of September, at 10 o'clock. Petitioner is advised that such demand for the so-called jury is founded upon the provisions of an act of Congress of March 1st, 1823, now found in sections 1009 to 1016 of the Revised Statutes relating to this District, and is intended to subject this petitioner, without appeal, to a form of trial before said justice of the peace which is unknown to the common law and which is, as petitioner is advised, illegal and unconstitutional.

3.

Petitioner is informed and believes that the claim of said respondent is that while a passenger on one of the cars of this petitioner on Tuesday, June 16th, 1896, about 9 p. m., he was forcibly ejected from said car by the officers and agents of petitioner, and by reason of such forcible ejection fell on his side or back and was severely injured, owing, as respondent asserts, to the negligence and improper conduct of this petitioner, its agents and employés. Petitioner avers on information and belief and the statements of disinterested witnesses that it has a perfectly good defence on the merits to any claim of respondent growing out of said occurrence; and petitioner seeks a fair opportunity to make such defence before an impartial tribunal, and is ready and willing to give any security that may be required for the prompt payment of any final judgment which may be pronounced against it in due course of law.

4.

Petitioner is informed and advised that under said sections 1009 to 1016 of the Revised Statutes D. C., and the construction placed upon them in practice, the effect of such demand of the respondent Hof will be that a constable, acting under the *venire* issued by said justice of the peace as aforesaid, will summon twelve persons, selected by said constable, who will "sit together" and hear the proofs and allegations of the parties in public, and then agree upon and deliver a so-called "verdict," upon which the justice must give judgment forthwith and issue execution accordingly; that under the decisions of the courts of this District interpreting the statutes which prescribe this so-called "trial by jury," the justice of the peace, in such alleged form of trial, has no powers whatever except to preserve order and keep the so-called "jury" together; that such justice cannot rule upon the admission or exclusion of any testimony which may be offered, no matter how irrelevant, improper, or in-

3 competent it may be; that he cannot give any instructions or directions to the so-called jury in regard to the law of the case, nor restrain counsel in whatever they may choose to say in argument to such jury; that he cannot set aside a verdict nor require a reduction of its amount, no matter how excessive, or grant a new trial; that such justice cannot sign a bill of exceptions, nor entertain an appeal or writ of error in any form after such a verdict; and, in short, that the matter in controversy will be absolutely and finally decided by the undirected, unguided, uncontrollable decision of twelve persons, selected by a constable and paid in the first instance by the party demanding the trial in this method, and there will be no known right of appeal or review. This petitioner further avers that this method of summary and arbitrary decision by twelve persons selected by a constable operates unfairly and with especial hardship upon corporations, particularly those known to have large properties, such as this petitioner, in a suit by or against an individual person, owing to the well-known sympathies and prejudices existing in such a case. Petitioner is informed that it is very frequent in courts holding jury trials according to the common law to have to set aside or reduce the verdicts of juries in such cases, and that if this power in the courts did not exist corporations would be subjected to many unfounded or exorbitant verdicts and judgments, and petitioner is apprehensive with just cause that this last-mentioned result will follow in "jury" trials before justices of the peace, owing to the absence of any control or regulation of the so-called "jury" and the absence (according to precedents) of any right of appeal.

5.

Petitioner is advised that by the 7th amendment to the Constitution of the United States, guaranteeing the right of trial by jury where the value in controversy exceeds $20, is meant trial by jury according to the rules of the common law (referred to in said amendment), by which rules in civil cases the jury is to determine only the *facts* in controversy under the direction and control of the presiding judge as to the *law;* that the court is thus the trier of the law, and the jury are the triers of the facts; that the court has the power and the duty to direct the verdict in certain cases, and to set aside any verdict which is not according to the law and the evidence, and to grant a new trial; that the judge is to decide what testimony shall be admitted or excluded, and may require a plaintiff to remit part of an excessive verdict or submit to a new trial and his rulings may be reviewed on exceptions, all of which rights are of great value and importance and are essential and inseparable incidents of a trial by jury according to the course of the common law, as it existed at and before the adoption of said amendment. By the act of Congress of February 19, 1895, increasing the jurisdiction of justices of the peace, it is provided that "where the sum claimed exceeds $20 either party shall be entitled to a trial by jury," but no provision is made for the method of such trial, and

4 the only provision for a so-called jury before a justice is derived from said act of 1823, which was passed when the amounts to be so decided were limited to $50.

6.

Petitioner avers that the only method in which the claim of said Hof can be tried by a jury according to the common law and the Constitution is by removing said suit from said justice of the peace into this court, and that if this is not done this petitioner will be deprived of its constitutional right to a trial by jury and will be in danger of being deprived of its property without due process of law, and will be denied the equal protection of the laws. The amount claimed by said Hof is within the jurisdiction of this court.

The premises considered, the petitioner prays—

That a writ of certiorari may be issued by this honorable court to said Lewis I. O'Neal, justice of the peace, to remove said claim of said Hof into this court for trial according to the course of the common law upon such terms as to security for costs and damages as this court may deem proper, and that petitioner may have such other and further relief as it may be entitled to.

THE CAPITAL TRACTION COMPANY,
By G. T. DUNLOP, *President.*

ENOCH TOTTEN,
J. S. FLANNERY,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

I, George T. Dunlop, being duly sworn, on oath say that I am the president of The Capital Traction Company, the above-named petitioner; that I have read the foregoing petition and have subscribed the same as the president of the said company; that the facts therein stated positively are true, and those stated upon information and belief I believe to be true. I further state that this application is not for the purpose of delay, but solely because I believe that said company has a just and meritorious defence to the whole of the respondent's claim.

G. T. DUNLOP.

Subscribed and sworn to before me this 8th day of September, A. D. 1896.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clerk.*

(Endorsed on back:) Let the writ issue. W. S. Cox, J.

5 *Return of the Justice of the Peace.*

Filed September 9, 1896.

DISTRICT OF COLUMBIA, *ss:*

The President of the United States to Chas. A. Darling or any qualified constable, Greeting:

Summon the Capital Traction Company, "incorporated," to be and appear before me, the subscriber, a justice of the peace in and for the District aforesaid, on the 20th day of August, A. D. 1896, at 1.30 o'clock p. m., to answer unto the complaint of Charles Hof, in a plea of damages of $300.00.

Given under my hand and seal this 17th day of August, 1896.

LEWIS I. O'NEAL,
Justice of the Peace, 452 *D Street N. W.* [SEAL.]

In Justice's Court.

Before Justice L. I. O'Neal.

HOFF
vs.
THE CAPITAL TRACTION COMPANY. } No. —.

The plaintiff joins issue upon the answer of the defendant filed in the above-entitled cause.

ALEX. WOLF,
D. W. BAKER,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, *To wit:*

In Justice's Court.

Before Lewis I. O'Neal, one of the justices of the peace in and for the District aforesaid.

CHARLES HOF, Plaintiff,
vs.
THE CAPITAL TRACTION COMPANY, "Incorporated," Defendant. } Action for Damages. At Law. No. —. For $300.00.

Date.	Proceedings.
Aug. 17, 1896	Summons issued to Charles A. Darling, constable, returnable Aug. 20, 1896, 1.30 p. m.
Aug. 17, 1896	Returned. Summoned as within directed by handing a copy of this writ to George T. Dunlop, president.
Aug. 20, 1896	Continued to Sept. 8, 1896, 3 p. m., by defendant.
Sept. 8, 1896	Continued to Sept. 10, 1896, 10 a. m., by plaintiff.
" 8, 1896	Issue joined and jury demanded by plaintiff.
Sept. 9, 1896	Defendants having orally pleaded "not guilty."

6 When I received the annexed writ of certiorari, whereby the proceedings before me in said suit were stopped.

LEWIS I. O'NEAL, *J. P.* [SEAL.]

I, Lewis I. O'Neal, one of the justices of the peace in and for the said county and District, by virtue of the annexed writ to me delivered, do hereby certify the record and proceedings in the suit in the writ mentioned unto the supreme court of the District of Columbia, together with all things touching the same, as fully and wholly as the same is now depending before me.

Given under my hand and seal this 9th day of September, A. D. 1896.

LEWIS I. O'NEAL, *J. P.* [SEAL.]

Cost paid by plaintiff..... $1 75
Cost paid by defendant..... 95

Motion to Quash Writ of Certiorari.

Filed September 11, 1896.

In the Supreme Court of the District of Columbia.

CAPITAL TRACTION CO. *ats.* CHAS. HOF. } At Law. No. 40239.

And now comes the respondent and moves the court to quash the writ of certiorari issued in this cause upon the return filed herein.

ALEX. WOLF,
D. W. BAKER,
Att'ys for Respondent.

Order Overruling Motion to Quash Certiorari.

In the Supreme Court of the District of Columbia.

THE CAPITAL TRACTION CO. *ats.* CHARLES HOF. } Law. No. 40239.

This case coming on to be heard on the motion of said respondent to quash the writ of certiorari heretofore issued herein, and counsel for the respective parties having been heard, on due consideration thereof it is adjudged and ordered by the court, this 7th day of October, 1896, that said motion to quash be, and the same is hereby, overruled, and the granting of said writ sustained; and it is further ordered that all proceedings before the justice of the peace herein after issue joined be, and the same are hereby, quashed.

And from this order the said respondent appeals in open court

7 unto the Court of Appeals, and the penalty of the appeal bond is fixed at fifty dollars.

W. S. COX, *J.*

Memorandum.

Oct. 8, '96.—Bond for appeal filed.

Waiver of Citation.

Filed October 14, 1896.

In the Supreme Court of the District of Columbia.

CHARLES HOF
ats.
CAPITAL TRACTION COMPANY. } At Law. No. 40239.

Waiver of citation.

The appellee, The Capital Traction Company, hereby waives service of citation on appeal taken by the respondent in the above-entitled cause.

ENOCH TOTTEN,
J. S. FLANNERY,
Attorneys for Capital Traction Co.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing are true copies of originals in cause No. 40239, at law, wherein The Capital Traction Company is plaintiff and Charles Hof is defendant, as the same remain upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 14th day of October, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 632. Charles Hof, appellant, *vs.* The Capital Traction Company. Court of Appeals, District of Columbia. Filed Oct. 15, 1896. Robert Willett, clerk.

8 THURSDAY, *November 5th, A. D.* 1896.

THE UNITED STATES *ex Rel.* THE BRIGHTWOOD RAILWAY COMPANY, Appellant,
vs.
LEWIS I. O'NEAL,
} No. 601.

and

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY.
} No. 632.

The argument in the above-entitled causes was commenced by Mr. D. W. Baker, attorney for the appellant Charles Hof, and was continued by Mr. C. Thom, attorney for the appellant The United States *ex rel.* The Brightwood Railway Company, and by Mr. M. J. Colbert, attorney for the appellee Lewis I. O'Neal, and by Mr. H. P. Blair, attorney for the appellant The United States *ex rel.* The Brightwood Railway Company, and by Mr. J. S. Flannery, attorney for the appellee The Capital Traction Company.

FRIDAY, *November 6th, A. D.* 1896.

THE UNITED STATES *ex Rel.* THE BRIGHTWOOD RAILWAY COMPANY, Appellant,
vs.
LEWIS I. O'NEAL,
} No. 601.

and

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY.
} No. 632.

The argument in the above-entitled causes was continued by Mr. J. S. Flannery, attorney for the appellee The Capital Traction Company, and by Mr. R. A. Heiskell, attorney for the appellee Lewis I. O'Neal, and by Mr. Alexander Wolf, attorney for the appellant Charles Hof, and was concluded by Mr. W. D. Davidge, attorney for the appellee The Capital Traction Company.

9 THE UNITED STATES *ex Rel.* THE BRIGHTWOOD RAILWAY COMPANY, Appellant,
vs.
LEWIS I. O'NEAL, } No. 601.

and

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY. } No. 632.

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

Both of these cases involve the question of the extent of the jurisdiction of justices of the peace in the District of Columbia and of the right of appeal from their judgments.

In the case of The United States *ex rel.* The Brightwood Railway Company *v.* O'Neal a petition was filed in the supreme court of the District of Columbia for the issue of a writ of mandamus to require a justice of the peace to pass upon an appeal bond which had been presented to him for his approval in pursuance of an appeal taken or sought to be taken from a judgment rendered by him upon the verdict of a jury in a suit before him where there had been a trial by jury in accordance with the provisions of the statute law upon the subject, and which bond the justice of the peace had declined to approve or accept solely upon the ground that there was no right of appeal provided by existing law from his judgments in such cases. Upon the authority of some former adjudications of the courts of the District of Columbia, to which there will be occasion to refer hereafter, the writ was refused; but in refusing it the justice of the supreme court of the District, to whom the application was made, gave expression to the opinion that his ruling was contrary to his own judgment as to the law.

In the second case, that of Charles Hof *v.* The Capital Traction Company, a petition was filed in the supreme court of the District of Columbia for a writ of certiorari to be issued to a justice of the peace for the removal into that court, for trial there in the first instance, of a cause pending before the justice of the peace, wherein a jury had been demanded by the plaintiff in the cause before the justice and the justice had issued, or was about to issue, his warrant for the summons. The writ was issued; and a return thereto was made by the justice of the peace. Thereupon there was a motion made to quash the writ. This motion the court denied, and refused to quash the writ; and an order was entered directing that all the proceedings before the justice of the peace should be vacated. But the court likewise refused to order the removal of the cause for trial in that court, presumably in conformity with the decision of this court in the case of Hendley *v.* Clark, 24 Wash. Law Rep. 197, wherein it was held that no such removal could be lawfully allowed on the ground merely of concurrent jurisdiction. And the cause

was apparently left pending before the justice of the peace, either indefinitely arrested in its progress or to be proceeded with, if he could proceed at all, without the intervention of a jury.

The conclusion reached by the learned justice who sat in this case is based, as it is understood, upon the theory that so much of the statute enacted in the premises as authorizes trial by jury before justices of the peace is unconstitutional and void. And it may be added that it was stated to us in argument that, in a suit subsequent to the two now before us, the same learned justice who sat in the first of these two cases has held that the whole legislation of Congress increasing the jurisdiction of justices of the peace beyond the sum of twenty dollars is in violation of the Constitution.

Upon appeal to this court, both of the cases now before us were argued together; and it is plain that the vital question in both is the same—the validity of the legislation of Congress providing for trial by jury in causes pending before justices of the peace. The question is one of very grave importance in the administration of justice in this District, and is deserving of our most serious consideration. This consideration we have earnestly sought to give to it.

From time immemorial in the jurisprudence of England, from which we have inherited the practice, there has existed and there has been uniformly recognized a difference between "petty debts," or debts of trifling amount, and other claims or demands, with reference to the several legal modes provided for their collection. For while the courts of general jurisdiction at Westminster had cognizance of all ordinary claims and demands, it was not considered appropriate that they should be burdened with the trial of causes involving only inconsiderable sums of money in which the costs of court would amount in most cases to more than the amount or value in dispute, and which would tend seriously to interfere with the peace and quiet of the community if they could all be brought into the courts of general jurisdiction. Consequently, pleas of debt or damage for such petty causes were cognizable in England in the county courts, courts baron, courts of the hundred, or some such minor tribunals of local and limited jurisdiction, proceeding in a more summary and informal manner than the courts of the common law at Westminster, but subject to some occasional power of control by these latter.

A similar difference or distinction of procedure seems to have characterized the colonial jurisprudence of all our American colonies. In Maryland as early as the year 1715 we find enactments of the colonial legislature vesting in the justices of the peace, who had already inherited from England the petty criminal jurisdiction from which they derived their designation, the cognizance also of controversies for "petty debts" which had been vested in the minor courts of the mother country. The jurisdiction so given was enlarged or modified by several subsequent statutes, until on December 29, 1791, the legislature of the State of Maryland, which in the meantime had adopted the Declaration of Independence, its own constitution, and the Constitution of the United States, superseded all previous legislation on the subject by the adoption of an act

entitled "An act for the speedy recovery of small debts out of court," by which authority was vested in justices of the peace to hear and determine all controversies wherein the debt or damages did not exceed ten pounds current money, or one thousand pounds of tobacco, which, as is well known, also served for the purpose of currency in those days. And the act went on to provide for an appeal by either party to the county court, then the ordinary court of general jurisdiction, in all cases where the debt or damage exceeded twenty shillings, common money, or 100 pounds of tobacco.

This act was in force in the State of Maryland when, by the cession of that State, the portion of it now known as the District of Columbia became the property of the Federal Union, and subject to the exclusive legislation over it vested by the Constitution of the United States in the Congress of the Union, as also more directly subject to the guarantees of that Constitution.

By the act of February 27, 1801 (2 Stat. 103), by which Congress assumed the jurisdiction over the District devolved upon it by the Constitution, it provided a judicial system for the District, among the provisions of which was one, contained in the eleventh section of the act, to the effect that justices of the peace should "have cognizance in personal demands to the value of twenty dollars, exclusive of costs." The limitation of twenty dollars, here specified, it may well be surmised, was suggested by the seventh amendment to the Constitution of the United States, in which it was ordained that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." In this act of Congress there was no provision for an appeal, such as there had been in the previous act of assembly of Maryland.

By an act of March 1, 1823 (3 Stat. 743), entitled "An act to extend the jurisdiction of justices of the peace in the recovery of debts in the District of Columbia," Congress enlarged the jurisdiction of these justices to controversies not involving more than fifty dollars of value; prohibited the circuit court, the then existing court of general jurisdiction, from holding original cognizance of any causes not involving more than fifty dollars; but provided that, in all causes involving more than five dollars of value, either party might appeal from the judgment of the justice of the peace to the circuit court, where the cause should be proceeded with *de novo*, yet might there also be determined summarily, unless a trial by jury should be demanded, in which case the parties should be entitled to such trial. Then evidently as an afterthought and by way of addition to the original act or bill, no doubt in deference to the requirements of the seventh amendment to the Constitution, Congress added other sections, in which it provided specifically and in some detail for the empanelling of a jury by the justice of the peace in all cases involving more than twenty dollars of value, upon the demand of either party to the cause.

This act, as modified by an act of February 22, 1867, which raised the limit of the jurisdiction of justices of the peace from fifty dollars to one hundred dollars of value (14 Stat. 401), was incorporated

into the Revised Statutes of the United States for the District of Columbia, sections 997 to 1027; and it is the constitutionality of this act, or of these sections of the revision, so far as they provide for trial by jury before justices of the peace, that is now in question.

But it is proper to note that, by a yet more recent act, that of February 19, 1895 (28 Stat. 668), Congress has still further enlarged the jurisdiction of the justices of the peace to causes involving not more than three hundred dollars of value; has made the original jurisdiction of the justices of the peace exclusive in causes involving not more than one hundred dollars; and has expressly declared that, in causes involving more than one hundred and not exceeding three hundred dollars, there shall be concurrent jurisdiction in the justices of the peace and in the supreme court of the District of Columbia. By this act it was further provided that "where the sum claimed exceeds twenty dollars either party shall be entitled to a trial by jury." But as no specific provision was made for such trial by jury, and as there is no further reference to that subject in the act, we must presume that the trial by jury thereby intended was that provided by the act of 1823, and that it was to be conducted in accordance with the provision of that act.

The act of 1895 also proceeds to enact in its third section "that no appeal shall be allowed from the judgment of the justice of the peace in any common-law action unless the matter in demand in such action or pleaded in set-off thereto shall exceed the sum of five dollars, nor unless the appellant, with sufficient surety, approved by the justice, enters into an undertaking to pay and satisfy whatever final judgment may be recovered in the appellate court."

From all which it is apparent that the matter of trial by jury in causes authorized by statute to be instituted before justices of the peace, and the matter of appeal from the judgments of these justices, remain substantially as provided in the act of 1823, with only the superadded requirement of a bond or undertaking in the case of an appeal.

But it should also be noticed that, both by the act of February 22, 1867, and that of February 19, 1895, power was given to the supreme court of the District of Columbia to make rules and regulations for the conduct of cases before the justices of the peace. The language of the act of 1867 is that the court shall "make and establish rules of practice, and prepare and publish forms of pleadings for bringing all forms of actions and the trial thereof before said justices of the peace," and that of the act of 1895 is that the court "shall make and establish such additional rules of practice and prescribe forms of process and proceedings rendered necessary by the act, and the same from time to time to alter and amend as might be deemed advisable." How far the supreme court of the District has exercised the authority so vested in it, we are not informed, and it is not perhaps material here to ascertain.

So much of the act of 1823, providing for trial by jury before the justices of the peace, and for appeals from their judgments, as has been incorporated into the Revised Statutes for the District of Columbia, modified by subsequent legislation, is as follows, although

the order of arrangement in the revision is somewhat different from that in the original act, a circumstance which may not be without some weight in our consideration, but by no means of controlling importance:

"SEC. 1009. In every action where the sum demanded shall exceed twenty dollars, it shall be lawful for either of the parties to the suit, after issue joined, and before the justice shall proceed to
11 inquire into the merits of the case, to demand of the justice that such action be tried by a jury.

"SEC. 1010. Upon such demand the justice shall issue a venire, under his hand and seal, directed to any constable of the District, commanding him to summon twelve jurors, to be and appear before the justice issuing such venire, at such time and place as shall be therein expressed.

"SEC. 1011. The jurors thus summoned shall possess the qualifications and be subject to the exceptions provided for jurors by law.

"SEC. 1012. If any of the persons summoned and returned as jurors shall not appear, or shall be challenged or set aside, the justice before whom the cause is to be tried shall direct the constable to summon, and return forthwith, talesmen, so as to make up the number of twelve, after all causes of challenge shall have been disposed of by the justice.

"SEC. 1013. The twelve persons shall be the jury who shall try the cause, each of whom shall be sworn by the justice, well and truly to try the matter in difference between the parties, and a true verdict to give, according to evidence.

"SEC. 1014. The jury being sworn, shall sit together, and hear the proofs and allegations of the parties in public.

"SEC. 1015. (Provides for an oath to the constable to keep the jury together.)

"SEC. 1016. When the jurors have agreed upon their verdict, they shall deliver the same publicly to the justice.

"SEC. 1017. The justice shall give judgment thereon forthwith, and may issue execution accordingly."

* * * * * * *

"SEC. 1027. When the debt or demand exceeds five dollars, and either the plaintiff or defendant shall think himself aggrieved by the judgment of a justice of the peace, he shall be at liberty to appeal to the next term of the supreme court of the District; and the appeal shall be there heard and determined as provided in section 774 to section 779, inclusive.

"SEC. 1028. No appeal shall be allowed from a judgment of a justice of the peace, unless the appellant, with sufficient surety, approved by the justice, enters into an undertaking to satisfy and pay all intervening costs and damages arising on the appeal." (This section, as it appears, has been superseded by the somewhat more stringent provision heretofore cited from the act of 1895.)

The sections 774 to 779, to which reference is here made, or at least two of them, sections 775 and 776, it is proper also to cite for the better understanding of the subject:

"SEC. 775. The supreme court (of the District) shall in a summary way hear the allegations and proofs of both parties, and determine upon the same according to law and the equity and right of the matter, at the same term, without further continuance or delay, unless it shall appear to the court that further time ought to be given to the party applying for the same.

"SEC. 776. Either of the parties may demand a trial by jury, or leave the cause to be determined by the court, at their election."

These sections also are taken from the act of 1823.

It is upon the theory that the appeal, provided in the foregoing section 1028 of the Revised Statutes, and in the act of 1823, from which the section is taken, lies as well in causes tried before a justice of the peace by a jury as in those that are tried by him without a jury, that the proceedings in the first of the two suits now before us are based; while in the second of these two suits, as already stated, the constitutionality of all the provisions regarding trials by jury before justices of the peace is directly brought in question.

Very soon after the passage of the act of March 1, 1823, in fact in the very same year, its scope and construction became the subject of judicial investigation; and five cases are found in the old circuit court reports, wherein the effect of the statute was sought to be ascertained.

In the first of these cases, which was that of Sherburne *v.* Semmes, 2 Cranch C. C. 446, there was an appeal from the judgment of a justice of the peace rendered in pursuance of the verdict of a jury; and one of the questions now before us was directly presented. Having doubt in regard to its jurisdiction, the court continued the case for argument. But there is no further mention of it in the reports; and it seems never to have been taken up again. The notice of the case is very brief; and we find in it neither argument of counsel nor any opinion by the court.

In the next year (A. D. 1824), the case of Davidson *v.* Burr, 2 Cranch C. C. 515, came before the court upon a similar appeal under similar circumstances. The case seems to have been fully argued, although the report of it, like most of the reports in Cranch, is exceedingly brief, and confined to a statement of the point decided. "It was objected that a justice of the peace trying causes by a jury was a judge of an inferior court of the United States, and therefore ought to be appointed *quamdin se bene gesserit;* and not having been so appointed, but holding his office only for five years, he was not a competent judge, and had no jurisdiction of the cause. It was also suggested that a cause once tried by jury could not at common law be tried again by jury in another court; nor could the fact be tried again by the court." The report goes on to say that "the court (one of the three justices however dissenting) was of opinion that the justice had jurisdiction; but that under the seventh amendment of the Constitution of the United States, which declares that in suits at common law no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law, there cannot be a trial by jury in this court of a cause which has been tried by a jury before a justice of

the peace. This cause has been tried by jury before the justice; and by the rules of the common law, it cannot be re-examined by a jury in any other court, nor by the judges without a jury."

Mr. Chief Justice Cranch added for himself the following: "A writ of error, upon a bill of exceptions, will only lie to a court of record. The proceedings of courts not of record can, by the common law, only be brought up by certiorari, if brought up at all, and not by appeal."

12 And with regard to the constitutional question raised, he said "that if the judge was such a judge of an inferior court of the United States as is intended by the third article of the Constitution of the United States, the same article fixed the tenure of his office; and it could not be altered by an act of Congress; and that if he was not such a judge, then the argument from the Constitution did not apply to his case."

The next case, that of Maddox *v.* Stewart, 2 Cranch C. C. 523, followed soon afterwards, and at the same term of the court. It was likewise an appeal from the judgment of a justice of the peace rendered upon the verdict of a jury. The report merely states that "the court (the same justice dissenting who had dissented in the previous case) dismissed the appeal upon the ground that a fact once tried by a jury cannot be re-examined otherwise than according to the rules of the common law, and that a second trial by jury in another court is not according to the rules of the common law."

The case of Denny *v.* Queen, 3 Cranch C. C. 217, followed in the year 1827. Here also was an appeal from a judgment of a justice of the peace, rendered in pursuance of the verdict of a jury. It seems that "a paper was sent up purporting to be a prayer to instruct the jury as to the law arising upon certain facts therein stated, but which was not certified as a bill of exceptions." The action of the court thereon is thus stated:

"The court (*nem. con.*) said that as the court had heretofore decided that when a cause had been tried by a jury before a justice of the peace we could not constitutionally try the cause again by a jury in this court and the court could not try it without a jury, there was not left for this court upon the appeal anything but the law of the case, as it appeared before the justice; but the act has not prescribed the mode by which the question of law should be made to appear to this court. It certainly was not now regularly before the court." And the appeal was dismissed.

Induced, probably, by an apparent reservation in the last sentence of the foregoing opinion, another, and, it would seem, a final attempt was made to sustain an appeal from the judgment of a justice of the peace rendered upon the verdict of a jury in the case of Smith *v.* Chase, 3 Cranch C. C. 348, in the year 1828. Here, at the trial before the justice of the peace, "the defendant tendered a bill of exceptions to an opinion of the justice upon a point of law, which the justice refused to sign;" and there was a motion made to compel him to sign it. But the court (one of the justices, however, doubting, but not dissenting) held that a writ of error would not lie to the judgment of a justice of the peace upon the verdict of a

jury, and that he was not bound to sign a bill of exceptions; and accordingly the motion was overruled.

In an able and elaborate opinion filed in this cause by Mr. Chief Justice Cranch—for himself, alone, however, as he takes pains to say, and not for the court, or even for the majority of it—the questions at issue, apparently for the first time in the history of this litigation, are discussed at length; and to this opinion, as the subsequent practice for nearly seventy years seems to have been based upon it, we will have occasion to recur in the sequel.

We have no record of any further agitation of the subject for about fifty years. But in the year 1876 the question of the right of appeal in such cases was raised again in the supreme court of the District of Columbia in the case of Fitzgerald *v.* Leisman, 3 MacA. 6; but it was speedily disposed of upon the authority of the cases above cited from Cranch's reports and in accordance therewith. Now again the question is raised in a new shape, and it must be confessed under a new light; and the great enlargement of the jurisdiction of the justices by the acts of Congress of 1867 and 1895, and the greater frequency of recourse to trial by jury for determination of the issues made before them, give enhanced importance to the controversy.

1. That the right of trial by jury secured by the seventh amendment of the Constitution of the United States in all suits at common law, where the value in controversy exceeds twenty dollars, means the right to trial by jury as known to the common law at the time of the adoption of the Constitution, with proceedings therein in accordance with the forms of the common law, we cannot regard as now open to question. Such is the apparently unanimous tenor of all the authorities on the subject. Parsons *v.* Bedford, 3 Pet. 447; Justices *v.* Murray, 9 Wall. 277; East Kingston *v.* Towle, 48 N. H. 57; Work *v.* State, 2 Ohio St. 299; Cogley's Principles of Constitutional Law, p. 250; Miller on the Constitution, p. 511. Nor do we regard it as open to question that at common law the province of a jury is limited to the determination of controverted questions of fact, put in issue by the pleadings of parties, and which are to be ascertained by the jury from such evidence as is admitted by a presiding court or judge to be presented to them, and in accordance with such instructions as to the law which such court or judge may give to them. This has always been held to be the law in civil cases; and for us it has now also been finally established as the law in criminal cases by the decision of the Supreme Court of the United States in the recent case of Sparf *v.* The United States, 156 U. S. 51.

The function of a jury at common law may now, therefore, be regarded as perfectly well settled. It is confined under the guidance of a court to the determination of questions of fact duly submitted to it, by the determination of which the court is enabled to reach a judgment between the parties. And if this be its proper and only function, it is plain that the jury can never be substituted for the court, and that the court cannot delegate or abandon to it the control of the matter of the introduction of testimony or the ascertainment of the rules of law applicable to the case pending before it.

The jury can never be permitted or authorized to take exclusive control of a case. On the contrary, it must take its law from the court, and it must consider no evidence but that which is allowed by the court and submitted to it.

When, therefore, in the opinion to which we have referred
13 as filed by Mr. Chief Justice Cranch in the case of Smith *v.* Chase, *supra*, that learned jurist joined in the judgment of the court that there could be no appeal, under the act of Congress of 1823, from the judgment of a justice of the peace in a cause tried before such justice by a jury, for the reason that the seventh amendment of the Constitution of the United States prohibited the re-examination of a fact tried by a jury otherwise than according to the rules of the common law, and yet at the same time denied to the jury authorized by that act the attributes of a common-law jury, it is plain that he had not sufficiently considered the inconsistent position thereby created. For the constitutional amendment must necessarily be construed to refer to a jury of the common law; and if the jury provided by the act of 1823 was not a jury of the common law, the amendment did not prohibit the re-examination of the facts found by it.

The learned chief justice said in his opinion: "It will be perceived that upon a demand of trial by jury, the cause is taken entirely out of the hands of the justice. He is obliged to summon and swear the jury and to render judgment according to their verdict. No authority is given to him to instruct the jury upon matter of law or fact, nor to set aside their verdict and grant a new trial. It seems to me that he acts as ministerially in entering the judgment upon the verdict as the clerk of this court does in entering its judgments. The jury are not bound by the opinions of the justice upon matters of law; nor do I perceive that he has a right to say what evidence they shall hear. If they disregard his opinion as to the law, or hear evidence which he disapproves, no new trial can be granted. They are to try the matter in difference between the parties, whether it be matter of law or matter of fact. The jury seems to be a complete substitute for the justice as to the trial of the cause. If a jury be not required by either party the justice is to decide the fact as well as the law. If a jury be demanded, they are to decide the law as well as the fact."

If this theory of the power and functions of the jury authorized to be summoned by the justice of the peace, under the act of 1823, be correct, that jury is an irresponsible mob, and not a jury of the common law. It is simply a body of compulsory triers or referees, the abnormal creation of an abnormal statute, and not the jury required by the Constitution, and to whose determination of questions of fact the Constitution gives the attribute of finality. But we fail to find any support of this theory either in the act itself or in any subsequent legislation on the subject.

Undoubtedly and beyond all question, in framing the act of March 1, 1823, Congress had in mind the seventh amendment of the Constitution; and it was the intention of that body to provide a constitutional common-law jury for the trial of issues before justices

of the peace. If it did not succeed in providing such a jury, it is either because the act is radically defective and insufficient in its terms to give effect to the manifest legislative intent, or else because it was not competent for Congress, under the Constitution, to provide a common-law jury for the courts of justices of the peace.

The statute belongs to a class in favor of which every intendment is to be made. It is not a statute in derogation of common law or common right. On the contrary, it is a statute intended to extend the domain of the common law and to facilitate the administration of justice. It may be that it was unwise to enlarge the jurisdiction of justices of the peace beyond the limit prescribed by the act of 1801; and it may be that it will yet be found expedient to transfer to municipal courts presided over by judges with fixed salaries and better versed in the law the civil jurisdiction now vested in justices of the peace, just as it has been found expedient to transfer to police courts the petty criminal jurisdiction which they formerly exercised. But thus far it has evidently been the policy of Congress to enlarge and extend the civil jurisdiction of these justices, and it is the duty of the courts in their construction of the statutes, as long as that policy lasts, to seek to give it effect and not to nullify it.

The court of the justice of the peace for the cognizance of petty cases, it must be remembered, was part of our judicial system at the time of the adoption of the Federal Constitution, and had been such for nearly two centuries or upwards. The petty courts of England, to which it corresponded, had been in existence from time immemorial. This court, although limited in the extent of its jurisdiction, was a very important factor in the administration of justice; and the Constitution of the United States did not fail to take notice of it; for in the reservation of the right of trial by jury in all cases involving more than twenty dollars of value, it evidently intended to leave undisturbed and unaffected by its provisions the petty civil jurisdiction exercised at the time by the justices of the peace. And when the Congress of the United States, for the purposes indicated in the eighth section of the first article of the Constitution, assumed jurisdiction of the District of Columbia, it took it, and it was evidently the intention of the Constitution that it should take it, with its then existing judicial system, subject to such modification thereof as might thereafter be made. The court of the justice of the peace within its narrow and restricted limits was as much a part of that judicial system, as was the court of general jurisdiction. It was not, of course, one of the courts of the United States to which any part of the judicial power vested in the Federal Government by the third article of the Constitution, could be given; for that article contemplated only the courts of general jurisdiction. But it was a court which, under its general power of legislation over the District of Columbia, the Congress might well adopt or establish. Its establishment was within the usual scope of such legislative power.

Such being the power of Congress, and it being the plain unmistakable purpose of that body to provide a common-law jury for the court of the justice of the peace in cases involving more than

twenty dollars of value, the question recurs whether the terms of the act of March 1, 1823, were sufficient to effect the purpose. It was asserted by Chief Justice Cranch, in his opinion, to which we have referred, that the jury provided by the act, while evidently regarded by him as a common-law jury, was fatally defective
14 in the constituent characteristics which we regard as essential to such a jury. But the act of Congress, in our opinion, does not justify any such conclusion. There is nothing in the act to warrant the deduction that the justice of the peace may not instruct the jury in the question of law arising in the case, or that he may not control the matter of the introduction of evidence, or that he may not even set aside the verdict of the jury and grant a new trial. Even if the act of Congress were entirely silent on the subject, the reasonable inference would be that, when the legislature provided the court of the justice of the peace with a jury, it intended that such jury should act in accordance with the course of the common law, and should serve precisely the same purpose which it serves in the courts of common law. When Congress says that in special cases there must be trial by jury, it must be taken to mean what it says; and it can only mean a jury of the common law; because we know of no other jury in our legal proceedings, except as the result of special statutory provision.

But we are not left entirely to inference in the matter. The statute plainly contemplates that, in the conduct of the trial by jury, the justice of the peace must exercise judicial functions. He undoubtedly exercises judicial functions in the empaneling of the jury; for it is distinctly and expressly provided that all causes of challenge must be disposed of by the justice. The justice is required to swear the jury to try "the matter in difference between the parties, and a true verdict to give according to evidence." Now, a "verdict" is the conclusion of a jury upon controverted questions of fact; it is a conclusion of fact, and not of law; and it is a conclusion which the statute commands the jury to give "according to evidence." Evidence and testimony do not mean the same thing. Evidence is such testimony as a court or presiding officer may regard as competent and may admit as proof under a pending issue. Plainly under the statute it is not for the jury, but for the justice, to control the introduction of testimony, and therefore necessarily to rule upon the competency of the testimony, which is offered to be adduced. And this is the main function of a judge or presiding officer in trial by jury. Instruction upon the law is only given when called for by the parties, or deemed proper by the presiding officer himself to be given. And the fact that the statute commits it to the jury "to try the matter in dispute between the parties," instead of authorizing them to try the issue joined between the parties, as the usual expression is in the courts of common law, cannot be permitted to weigh in the balance for a moment. Congress simply used the expression that was most readily intelligible to the common mind and to the court of a justice of the peace.

It may be noted that, when the Congress provided for trial by jury in the police court of the District of Columbia, which in that

regard stands in no different relation to the common law from the courts of the justices of the peace, it equally failed to provide for any express power in the judges of that court to control the jury. See act of July 23, 1892 (27 Stat. 261), and March 3, 1891 (26 Stat. 848). And yet it is properly the practice of those judges to control the admission of evidence, and to instruct their juries upon the law, as also to award new trials.

If it be objected that the justices of the peace, being often laymen and unacquainted with the law, are incompetent to instruct the jury upon questions of law, this is a consideration which might properly have weight with the appointing power and with the executive and legislative branches of government. It can have no weight whatever in the construction of such a statute as that now under consideration. Moreover, we know of no statute which requires the appointment of ignorant and incompetent persons as justices of the peace; and the common law certainly does not regard ignorance as a qualification for their office. They are expressly given jurisdiction to try the causes that are assigned to them both upon the law and the facts, and even to apply the principles of equity; and it seems to be no greater jurisdiction to instruct the jury upon the law than to apply the law themselves. It must be remembered that his jurisdiction in all cases is over "petty causes," in which prompt decision and determination according to the ordinary rules of average reason are more required for the peace and good order of the community than technical and rigid accuracy in the statement of legal propositions.

It can, therefore, scarcely be controverted with reason that the act of Congress of 1823 provided for the court of the justice of the peace a common-law jury, with all the qualifications of such a jury, if it was competent for it, under the Constitution, so to provide. And it is in this question of the constitutional power of Congress so to provide that the gist of this controversy lies. The question then is narrowed down to the inquiry whether, in legislating for the District of Columbia, it was competent for the Congress of the United States to provide for the empaneling of a common-law jury in the court of a justice of the peace for the determination of questions of fact arising in suits instituted before such justice.

It seems to us that the question should rather be: Why is it not competent for Congress so to provide? For the difficulty would seem to be, not to find the requisite authority in Congress, but to find adequate reason for the denial to it of such authority.

To Congress has been committed by the Constitution the power of exclusive legislation over the District of Columbia; and it has been frequently decided that this means all proper and legitimate legislation not prohibited by the Constitution and not inconsistent with our republican institutions. Stoutenburgh *v.* Hennick, 129 U. S. 141; De Geoffroy *v.* Riggs, 133 U. S. 258; Gibbons *v.* District of Columbia, 116 U. S. 104; Loughborough *v.* Blake, 5 Wheat. 317. The collection of petty debts through the instrumentality of tribunals of a limited jurisdiction, proceeding in a more or less summary manner, and not in precise accordance with the methods of the

ordinary courts of general jurisdiction, may be said to constitute part of our common law. As we have seen, it has constituted an integral portion of our system of jurisprudence from time immemorial. Undoubtedly it is competent for the legislative authority to regulate this judicial instrumentality. It is competent for Congress to prescribe its rules of practice and the course of its procedure. And if the legislature may authorize the justice of the peace to decide both law and fact in these petty controversies, when he sits alone without a jury, as no one questions that he may properly do, it is difficult to see why he may not be authorized by the legislative power to call in a jury to aid him in the determination of matters of fact, reserving matters of law to himself. It is difficult to see why the subordination of his methods and of his summary powers to the methods of the common law by the introduction into the proceedings before him of a common-law jury, should be contrary to the common law or violative of any constitutional or other right. To assimilate the summary methods of the justice of the peace to the more regular and more orderly methods of the courts of common law, would seem to be in the line of constitutional requirement rather than in antagonism to it.

The only plausible objection to this position is that it seems to tend to place the courts of the justices of the peace on the plane of courts of the United States and to make the justices themselves judges of courts of the United States, when, in consequence of their limited tenure of office, neither they nor their courts could be recipients of the judicial power of the United States under the third article of the Constitution. But this objection we regard as plausible rather than substantial.

The court of the justice of the peace is most undoubtedly, in a certain sense, a court of the United States, and he is himself a judge of such a court. But the courts of the United States referred to in the third article are the courts of general jurisdiction, not the exceptional courts of casual occurrence or limited jurisdiction used merely as adjuncts in the administration of the law. It does not seem to be necessary to have recourse to the distinction taken in the case of Canter *v.* Insurance Co., 1 Pet. 511, between legislative and constitutional courts; for the Constitution itself, in giving the Congress general power of legislation over the District of Columbia, must be presumed to have intended that Congress should deal with the District substantially in accordance with the system in vogue both in the colonies and in England at the time of the Declaration of Independence and in the several States of the Union at the time of the adoption of the Constitution; and when it referred generally to the judicial power of the United States and to the courts created or to be created for its exercise, it meant such judicial power as was exercised by the courts of general jurisdiction at Westminster, and the courts authorized to be established were similar courts of general jurisdiction. It was not intended thereby to affect in any manner the legislative authority over the petty tribunals in the District of Columbia that had taken or were intended to take the place of the English county courts and courts baron.

To call the justice of the peace a judicial officer, rather than a judge, does not alter the situation in any manner. The fact remains that he is a judge, a judge both of law and fact, empowered to hear and judicially to determine legal controversies, a judge with wide powers and great responsibilities within the limited scope of his jurisdiction. But his court, being in fact a court of limited jurisdiction, is not such a court as was contemplated in the third article of the Constitution as a depositary of the judicial power of the Federal Union. Consequently to assimilate his procedure to that of the courts of common law, is not in violation either of the letter or the spirit of the Constitution.

This same question was raised in the case of Davidson *v.* Burr, 2 Cranch C. C. 515, heretofore referred to, and seems to have been settled in accordance with the views here expressed.

It seems to us, therefore, that there is no constitutional inhibition that would prevent Congress from providing a common-law jury for the courts of justices of the peace; and inasmuch as it is plain that it was the legislative intention in the act of 1823 so to provide, and as the terms used in the act are sufficient for the purpose, the conclusion would necessarily follow that the act of March 1, 1823, was a valid and constitutional exercise of legislative authority. The jury provided by that act being a common-law jury such as was contemplated by the first clause of the seventh amendment of the Constitution, the second clause of the same amendment, which ordains that "No fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law," is likewise applicable to the case, and must be held to preclude any appeal from the judgment of a justice of the peace in any case tried before him by a jury pursuant to the provisions of the act of 1823. The rules of the common law in such cases allow of re-examination only upon bills of exceptions, or through motions for a new trial or in arrest of judgment; and inasmuch as there is no provision of law for the removal of causes to an appellate court from the court of the justice of the peace upon bills of exceptions, there is no warrant for re-examination in such cases in the courts of general jurisdiction.

The right of appeal, which is provided by section 1029 of the Revised Statutes of the District of Columbia from the judgments of justices of the peace to the supreme court of the District, and which section, if considered alone and without regard to the context, might be assumed to authorize appeals from all judgments of these justices in controversies involving more than five dollars of value, whether rendered upon the verdict of a jury or after exclusive hearing by themselves without a jury, must be construed in the light of the statute itself and of the constitutional inhibition, to extend only to those cases in which Congress could properly give the right, and those cases would be such only as are tried by the justices without a jury.

Section 1029 is taken from the act of March 1, 1823, and the collocation in that act of the special provision, which has been incorporated into this section, shows plainly that the right of

appeal therein provided for was intended to be referable exclusively to the judgments to be rendered by the justices themselves without a jury. It follows immediately upon the provisions of the act conferring jurisdiction upon the justices, and wherein they are authorized to act without a
16 jury. As remarked by Mr. Chief Justice Cranch, in the opinion to which we have referred, the portion of the act providing for trial by jury, when such trial should be demanded, was an addition to the original draft of the act. "The seventh section of the act," he says, "when reported, did not contemplate a trial by jury before the justice. Although this circumstance is not a legitimate ground of construction, yet it corroborates the construction drawn from the language of the act itself, which, in its letter as well as in its spirit, applies only to those cases in which the act of the justice is the real cause of the grievance."

During the period of seventy years for which the act of 1823 has been in force, either as originally enacted or as incorporated into the Revised Statutes, the course of procedure thereunder has been as established by the decisions of the old circuit court of the District, to which reference has been made. Appeals have been entertained only from the judgments of justices of the peace, when they have acted themselves as judges both of law and fact, without a jury; no appeal has ever been entertained from judgments of the justices rendered upon the verdict of a jury. To overthrow this practice of seventy years and the construction of the statute upon which it is based, the error of that construction should be made very plainly to appear. In order to show that error and to sustain the right of appeal from the judgments of the justices of the peace in all cases, whether rendered upon the verdict of a jury or otherwise, a construction must be put upon the statute which would introduce a monstrosity into our law, a jury which is no jury, but a farce and a fraud, a delusion, and a snare, a stone given when bread was asked for. This we cannot regard as the legitimate construction of the act. It would certainly be an utter nullification of its scope and purpose and of the intention of Congress in its enactment; and, as we think has been shown, no such construction is demanded in order to harmonize the act with the Constitution. On the contrary, we regard such construction as antagonistic both to the letter and the spirit of the Constitution.

In the case of Callan *v.* Wilson, 127 U. S. 140, the Supreme Court of the United States, citing and reviewing several cases to the contrary and disapproving them, held that, when trial by jury is guaranteed by the Constitution, it is the requirement of that instrument and the dictate of reason that such trial should be had at as early a stage of the proceedings as might conveniently be; and that it did not comply with the constitutional requirement to give such trial only on appeal to a superior court of general jurisdiction after trial and judgment upon summary process in a subordinate court, in that case the police court of the District of Columbia. It was held that a man should not first be tried and condemned, and only

then, as the condition and result of an appeal to the higher tribunal, given his constitutional right of trial by jury.

The case of Callan *v.* Wilson, it is true, was a criminal case; but in this regard there is absolutely no difference whatever in principle between civil and criminal cases. When the Constitution says that, in suits at common law, where the value in dispute exceeds twenty dollars, the right of trial by jury shall be preserved, it would be no more than a mockery of our fundamental law to hold that the first trial of the issue shall be a mock trial, with a thing called a jury but which is no jury, and the real trial, the trial by jury authorized and required by the Constitution, should be postponed to some subsequent stage of the proceedings, after judgment has been rendered, and execution is liable to issue, and property is liable to be taken; and that even then the constitutional right of the party shall only be allowed on condition that he appeals and enters into bond to pay the future judgment that may be rendered against him in the appellate court. It seems to us that this would be a juggling with justice, and an evasion of the Constitution. Congress clearly did not intend any such thing in this case; and yet, if the jury provided by the act of 1823 is not a common-law jury, but an organized mob of compulsory referees, then the construction of the act which would lead to such a result would undoubtedly convert the enactment into a piece of legislative jugglery.

But the whole argument in this regard seems to be based upon some theory of an absolute right of appeal in all these cases to a tribunal of the common law. Objection is made, not so much to the jurisdiction conferred upon the justice of the peace, as to the denial of the right of appeal from his judgments by the intervention of a jury in his court or by any other cause whatever. And it might be inferred from the argument that the right of appeal was an inalienable right and part of the "due process of law" secured to us by the Constitution of the United States, by Magna Charta, and by the dictate of natural justice.

But there is no such absolute right of appeal. Appeal is unknown at common law. Even a bill of exceptions, by which alone a cause at common law may in general be reviewed in an appellate court, is the creation of statute law, and was given by the statute of Westminster 2. In our country, where the judicial system, notwithstanding apparent resemblances, differs radically from that of England, the right of appeal has always been recognized as the creature of statutory enactment, subject not only to be regulated and even taken away by such enactment, but even requiring express provision of law for its existence. Such is the case even with a tribunal so purely appellate in its character as the Supreme Court of the United States, which has itself distinctly and repeatedly held that it can exercise only such appellate power as is given to it by Congress. Baltimore & Potomac R. Co. *v.* Grant, 98 U. S. 398; McKane *v.* Durston, 153 U. S. 684, 687; Andrews *v.* Swartz, 156 U. S. 272, 275; Dureosseau *v.* United States, 6 Cranch, 307.

We conclude that the so-called right of appeal is not an absolute or inalienable right of parties, but that it may be given, regulated,

or taken away by act of Congress without violation of any inherent right.

The only alternative to the conclusion to be deduced from the views here expressed is that which would hold as unconsti-
17 tutional and void all the enactments of Congress that purport to confer upon justices of the peace jurisdiction in civil causes over controversies involving more than twenty dollars of value; and we understand that this conclusion has in fact been held by one of the justices of the supreme court of the District in a cause subsequent to the two now under consideration in this court. And this conclusion would certainly be the logical deduction from the argument that Congress could not provide a common-law jury for the court of the justice of the peace. For the jurisdiction conferred by statute upon the justice of the peace to try causes involving more than twenty dollars of value is to try them with a common-law jury when a jury is demanded by either of the parties; and if he cannot summon such a jury upon such demand, he has no authority at all to try the causes. The justice, of course, may proceed without a jury, if a jury is waived; but if a jury is demanded, his jurisdiction to proceed instantly ceases.

This conclusion would not only affect the title to numerous lots of ground in the District of Columbia, which have been transferred upon writs of execution, but would likewise paralyze the administration of justice in this District in all causes involving more than twenty dollars and not more than one hundred dollars of value; for under such a conclusion there would be no tribunal in the District of Columbia competent by law to take cognizance of such causes. It behooves us to pause before we sanction such a result. We do not find it necessary to adopt the course of reasoning that would necessarily, in our opinion, lead to it.

We may add that, if the continued exercise of the practice which has prevailed in the District for upwards of seventy years has become a source of hardship by reason of the enlarged jurisdiction conferred upon the justices of the peace by the acts of 1867 and 1895, and if it has become inexpedient that these justices should deal with the causes by these acts committed to their cognizance without the appellate supervision of the courts of common law, it is for Congress, not for the courts, to apply the remedy. But it may be remarked that, by virtue of the authority conferred by the two acts cited upon the supreme court of the District of Columbia to make rules and regulations for the conduct of causes before justices of the peace, that court may greatly mitigate the evil, if evil there is in the practice.

Entertaining the views which we have here expressed, not without the hope that opportunity may be found to have them reviewed and corrected, if there is error in them, by our tribunal of last resort, especially as there is dissent in this court and the views expressed are only the views of a majority of the members of the court, we are constrained to affirm the order appealed from in the first of the two causes before us, and to reverse the order in the second cause.

The decision of this court, then, is that the order of the supreme

court of the District of Columbia refusing to issue the writ of mandamus in the cause of The United States *ex rel.* The Brightwood Railway Co. *v.* Lewis I. O'Neal, be, and the same is hereby, affirmed, with costs; and that the order of the same court in the cause of Charles Hof *v.* The Capital Traction Company refusing to quash the writ of certiorari therein issued to the justice of the peace and quashing the proceedings had before the justice of the peace subsequently to the joinder of issue in the cause before him pending, be reversed, with costs. And this last-mentioned cause will be remanded to the supreme court of the District, with directions to quash said writ of certiorari, and for such further proceedings in the premises, if any, as may not be inconsistent with this opinion. And it is so ordered.

Mr. Chief Justice ALVEY, dissenting:

The questions presented on these appeals are of more than ordinary importance to the people of this District. They affect the manner of administering justice, as it has heretofore been administered in civil cases, by justices of the peace. The questions are, 1st. What is the nature and extent of the civil jurisdiction of the several justices of the peace, under the Constitution and the acts of Congress made in pursuance thereof, as the Constitution and acts of Congress apply to the District of Columbia? 2d. Whether the act of Congress of March 1, 1823, ch. 24 (3 Stat. 743), and the subsequent re-enactment thereof, providing for trial by jury before justices of the peace in civil cases is constitutional and valid; and, if constitutional and valid, whether the jury so provided for is such a jury as is within the meaning and contemplation of the seventh amendment of the Constitution of the United States, or otherwise? And, 3d. If the acts of Congress giving the right to trial by jury in actions brought before justices of the peace be valid, whether the right of appeal exists to the supreme court of the District from judgments rendered upon such trial, and if an appeal lies, to what extent are such judgments re-examinable in the appellate court?

1. The Constitution of the United States, art. 1, sec. 8, among the delegated powers to Congress, declares that Congress shall have power to constitute tribunals inferior to the Supreme Court; and to exercise exclusive legislation in all cases whatsoever over this District of Columbia, as the seat of the Government of the United States. By repeated decisions of the Supreme Court of the United States, this latter power has been construed to be equally comprehensive in Congress as are the ordinary legislative powers exercised by the State legislatures, under State constitutions. There is, therefore, no question of the right of Congress to provide for the appointment of justices of the peace, and to prescribe and provide for the performance of their duties, though such officers are not mentioned or designated in the Constitution.

The office of justice of the peace had its origin in England by virtue of the Statute of 34 Ed. 3, as we now recognize it, though the duties pertaining to it have been variously modified and enlarged, both in this country and in England. A civil jurisdiction has been engrafted upon the office and has been exercised from an early time

in this country; and at the time, and long before, the separation of this District from the State of Maryland, civil jurisdiction for
18 the recovery of small debts was exercised by justices of the peace in that State. And in the act of Congress of February 27, 1801, declaring the laws in force in the State of Maryland to be in force in this District, it was enacted that justices of the peace "shall have all the powers vested in, and perform all the duties required of justices of the peace, as individual magistrates, by the laws in force within this District." This statutory provision is still in force in this District, as will appear from the Revised Statutes of the United States relating to this District, sec. 995; and their jurisdiction has been declared and extended by repeated subsequent acts of Congress.

A justice of the peace appointed for this District was recognized and defined by the Supreme Court as an officer of the Government of the United States. This was held in the case of Marbury *v.* Madison, 1 Cr. 137; and in the subsequent case of Wise *v.* Withers, 3 Cr. 331, where the question was whether a justice of the peace in this District was an officer, judicial or executive, of the Government of the United States, and thus entitled to exemption from military duty, Mr. Chief Justice Marshall, in delivering the opinion of the court, said: "If a justice of the peace is an officer of the Government of the United States, he must be either a judicial or an executive officer. In fact, his powers, as defined by law, seem partly judicial and partly executive. He is, then, within the letter of the exemption, and of course must be considered as comprehended within its proper construction, unless there be something in the act which requires a contrary interpretation." The justice of the peace was held to be exempt from military duty.

It is very clear, however, that a justice of the peace in this District is not a judicial officer within the meaning or contemplation of the Constitution of the United States. He is not a judge of a tribunal inferior to the Supreme Court, within the meaning of the Constitution. He is not a judge in any constitutional sense; his proceedings are not according to the course of the common law, and are not matters of record, according to the meaning given by the common law. His jurisdiction in civil matters is purely statutory, and are of a summary character, intended to bring justice home, in matters of small amount, to every man's door, and to dispense with delays and expensive process of the ordinary courts of record. This has been found necessary to meet the exigencies of society in nearly all States and communities that have founded their judicial systems upon English models. In speaking of the inferior courts of England, Blackstone, in his commentaries (Bk. 3, ch. 4,) says: "These little courts, however, communicated with others of a larger jurisdiction, and those with others of a still greater power; ascending gradually from the lowest to the supreme courts, which were respectively constituted to correct the errors of the inferior ones, and to determine such causes as by reason of their weight and difficulty demanded a more solemn discussion." In this country, instead of the court baron, the hundred courts, and the county courts, as they formerly

existed, in England, and of which Blackstone speaks, a considerable portion of the jurisdiction that was exercised by those inferior courts, has been very generally conferred upon justices of the peace, with the right of appeal to a superior court. In this District, justices of the peace have from the commencement been invested with jurisdiction to try cases and render judgments for any sums not to exceed certain amounts, and which amounts have, from time to time, been increased or extended from $20 to $300 as the limit; the supreme court of the District, until recently, having concurrent jurisdiction of all amounts exceeding $50, and at present, under the act of Congress of February 19, 1895, to extend the jurisdiction of justices of the peace, it has concurrent jurisdiction of all amounts exceeding $100. By the act of Congress just referred to of 1895, it is provided that justices of the peace in this District "shall have jurisdiction to hear, try and determine all civil pleas and actions, including attachments and replevin, when the amount claimed to be due, or the value of the property sought to be recovered shall not exceed $300, except," &c. And by the next section of the act it is declared "that such jurisdiction shall be exclusive original jurisdiction where the amount claimed to be due, or the value of the property sought to be recovered, shall not exceed one hundred dollars, and original and concurrent with the supreme court of the District of Columbia where the amount claimed to be due, or the value of the property sought to be recovered, is more than one hundred dollars, but does not exceed three hundred dollars; and where the sum claimed exceeds twenty dollars either party shall be entitled to a trial by jury."

The right of appeal is given to either party, in all cases, to the supreme court of the District, where the debt or claim exceeds $5. The supreme court of the District is required, in a summary way, on appeal taken, to hear the allegations and proofs of both parties, and determine upon the same according to law and the equity and right of the matter, at the same term, without continuance or delay, &c.; and either of the parties may demand a trial by jury, or leave the cause to be determined by the court, at their election. Rev. Stats. U. S. D. C., secs. 774, 775, 776. The trial on appeal to the supreme court of the District is *de novo*, and as if the case had been originally instituted in that court. This is manifest from the terms of the statute, directing the manner and course of investigation of the allegations and proofs on appeal. Either party is secured in his right to a jury trial on appeal, if he desires such mode of trial; and it has been held in many cases, as shown by Judge Cooley, "that it is competent to deny to parties the privilege of a trial by jury in a court of first instance, provided the right is allowed and secured on appeal. It is undoubtedly competent," says the author, "to create new tribunals without common-law powers, and to authorize them to proceed without a jury; but a change in the forms of action will not authorize submitting common-law rights to tribunals in which no jury is allowed." Cooley, Const. Lim. (6th ed.) page 505; Emerick *v.* Harris, 1 Binn. 416; McDonald *v.* Schell, 6 S. & R. 240; Wilson *v.* Simonton, 1 Hawks, 482; Monford *v.* Bar-

ney, 8 Yerg. 444; Beers *v.* Beers, 4 Conn. 535; Reckner *v.* Warner, 22 Ohio St. 275; Jones *v.* Robbins, 8 Gray 373; Flint
19 River, &c., Co., *v.* Foster, 5 Ga. 194; Lincoln *v.* Smith, 27 Vt. 328, 360; Stewart *v.* Baltimore City, 7 Md. 500. This general principle has been modified as applied to criminal cases, upon the principle that the accused should not be first convicted by a court and then be subject to another trial to entitle him to an acquittal by a jury. It is, therefore, held that the prisoner has a right to jury trial from the first moment and in whatever court he is put on trial for the offense charged. Callan *v.* Wilson, 127 U. S. 540. It is manifest, however, that there is a marked distinction between the case of a criminal charge, involving the life or liberty of the party accused, and that of a civil proceeding for the recovery of small debts or demands as between party and party. The case of Callan *v.* Wilson was decided on the construction of the second section of the third article of the Constitution, which declares that "the trial of all crimes, except in cases of impeachment, shall be by jury;" and on the construction of the sixth amendment to the Constitution which declares that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." But the right to trial by jury, secured by the seventh amendment to the Constitution, applies only to civil cases, in which legal rights are to be ascertained and determined, as distinguished from rights in criminal cases or equitable rights.

2. The next question is, whether the jury provided for by the act of Congress of March 1, 1823, ch. 24, and confirmed by subsequent acts of Congress, is a legal and valid jury for the trial of cases before justices of the peace, and if so, whether such jury is a common-law jury, and such as is contemplated by the seventh amendment of the Constitution.

In view of the exclusive legislative power of Congress over this District, it is difficult to conceive how a question can be seriously raised as to the want of power in Congress to provide for a jury as an aid to the exercise of the jurisdiction conferred upon justices of the peace. But whether such jury is a common-law jury, and therefore within the meaning and contemplation of the seventh amendment to the Constitution or a jury of purely a statutory creation in analogy to the common-law jury, is another and a different question. By the seventh amendment, sec. 1, to the Constitution, it is provided that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." This was simply preserving the common-law right of trial by jury, and all the substantial incidents belonging thereto, without the power of Congress to violate or impair that right.

It has been held from an early day that this provision of the Constitution contemplated only the trial by jury as known and defined by the common law, as distinguished from juries that may be provided for to aid in the administration of other systems of law, such as the equity, admiralty, or the ordinary probate jurisdiction,

or other special statutory juries. Parsons *v.* Bedford, 3 Pet. 433. The jury secured by the Constitution is for the trial of suits at the common law, and their findings of fact cannot be re-examined, except according to the rules and course of the common law. But the jury provided for by the act of Congress of 1823, ch. 24, is not a common-law jury, in any proper sense of the term. It is indispensable to the exercise of the functions of a common-law jury, that it should sit with a judge or court of record, and whose proceedings are according to the course of the common law. Such jury can only decide matters of fact, and that must be under the direction and subject to the control of a judge of record. Without such judge or court a common-law jury cannot perform its proper functions as such. And though a jury may be instituted as a substitute for the common-law jury, with most of its incidents, it is not the same thing, and does not fulfil the common-law definition. The respective functions of judge and jury are stated by Lord Coke in several places in his commentaries upon Littleton and which have been uniformly recognized as the true lines of distinction. At page 125, section 193, Lord Coke says, that "tryall is to finde out by due examination the truth of the point in issue or question between the parties, whereupon judgment may be given. And as the question between the parties is twofold, so is the triall thereof; for either it is *questio juris*, that shall be tried by the judges either upon demurrer, special verdict or exception, * * * or it is *questio facti*" And at page 155*b*, sec. 234, the learned author says, "The most usual triall of matters of fact is by twelve men; for *ad questionem facti non respondent judices;* and matters in law the judges ought to decide and discuss; for *ad questionem juris non respondent juratores.*"

But, as we have seen, "a justice of the peace, as an individual magistrate," is not a judge within the meaning of the Constitution, and holds no court in the common-law sense; and the jury provided for is clearly not a common-law jury. The jurors required to be summoned and empaneled are simply aids or auxiliaries to the magistrate in the exercise of his jurisdiction; and, in analogy to the functions of the common-law jury, are required to hear the evidence and render a verdict thereon. And while without a competent court there can be no jury in a common-law sense of the term, yet there may be a jury authorized by statute to aid in the exercise of a special summary jurisdiction, such as that of a justice of the peace, without a court according to the common-law definition.

Nor is there anything anomalous or novel in these definitions and distinctions; and certainly it was equally competent to Congress to provide for such jury as it would be to provide for a special jury to hear and determine issues out of a court of equity. Such jury would clearly not be a common-law jury to hear and decide upon common rights, within the meaning of the Constitution. The chancellor would not be concluded by the verdict of the jury, but he could re-examine the facts embraced in the findings of the jury.

In the State of New York, the constitution of the State secured to the party proceeded against trial by jury; and in the case of

People *v.* Fisher, 20 Barb. 652, the supreme court of that
20 State said: "A common-law jury trial can only be had in a court of common-law jurisdiction, both as regards the character of the court and its mode of procedure. It is not true that simply making the jury to consist of twelve men constitutes a common-law jury trial." And therefore, instead of twelve men, as provided by the act of 1823, ch. 24, it was equally competent to Congress to have provided for any different number than twelve, either more or less, such jury not being a common-law jury, but one constituted in analogy to the common-law jury only. Work *v.* State, 2 Ohio St. 296.

In the work of Messrs. Thompson and Merriam on Juries, sec. 10, the authors have collected the authorities upon this question, and stated the result of them as follows: "But whenever facts are to be found in any proceeding in which a jury was not required by the common law, a jury of any number may be authorized within the discretion of the legislature. Thus justices' courts, not being courts of record, are not within the constitutional provision just mentioned. Juries did not form a part of the machinery of such tribunals at common law, and so long as an appeal is provided for to the common-law courts from their determinations, no constitutional objection can arise whether the facts are found by a justice or by the aid of a jury of any number of men."

This is, doubtless, in strict accordance with long-settled views and opinions, and established practice in all jurisdictions where the judicial functions of the justice of the peace are similar to those exercised by justices of the peace in this District.

3. But it is argued in these cases, and it was so held in the court below, that there is no appeal, and can be none, in any case arising before a justice of the peace where a jury has been or may be demanded, under the act of Congress of 1823, ch. 24; that the jury provided for by that act is invested with exclusive power of deciding both the law and the facts of the case, wholly irrespective of the power of the justice of the peace, and that there are no means provided for an appeal in any such case, and there can be no review of the findings of the jury. But clearly this construction is without valid foundation. It is true, if the jury provided for by the act of 1823 was a common-law jury, it could not be required to decide matters of law, nor could its findings of fact be made re-examinable in any other manner than according to the course of the common law. But not being a common-law jury, the inhibition of the Constitution does not apply to its findings, and a reasonable construction of the statute does not require that such jury as that provided for should decide matters of law as well as of fact. The jurisdiction that is exercised is that delegated to the justices of the peace; the agency of the jury is only auxiliary to the exercise of that jurisdiction. The jury is sworn to decide according to the evidence, not the law, and to render a verdict thereon, not a judgment. The judgment is the effective result of the trial, and that is required to be rendered by the justice of the peace. He may not have power, by the terms of the statute, to set aside and vacate the verdict; but

he is required to determine all questions relating to the qualifications of the jurors, and he must, from the necessity of the case, and upon plain principles of implication, have the right to swear the witnesses and determine what evidence shall be heard and considered by the jury; and if no sufficient evidence be offered, it becomes his plain duty to direct a verdict accordingly. The jurors must, in analogy to the relation of judge and jury at the common law, be subject to the direction of the justice in the course of the trial. Otherwise such trials would likely become farcical, and bring the administration of justice before justices of the peace into contempt. And such being the relation of justice and jury in the trial of causes, in any case where verdict and judgment have been entered, whether upon evidence, or for the want of evidence, and in cases where judgments have been entered without verdicts, the party supposing himself aggrieved thereby has the right of appeal therefrom to the supreme court of the District of Columbia. This right of appeal exists in all civil suits tried before justices of the peace, where the debt or demand is above $5; and it does not except the cases tried with the aid of a jury. All the legislation of Congress in regard to the civil jurisdiction of justices of the peace must be construed *in pari materia*, and given such effect as will best accomplish the objects of the statutes. The appeal in all cases is taken from the judgment of the justice, whether rendered upon his own inquiry or upon the verdict of a jury, and never from the verdict itself. Upon the appeal coming into the supreme court of the District, that tribunal is required to hear the case on the allegations and proofs *de novo*, as if the case had originated in that court; and either party may demand a jury trial. The fact that the case was tried before the justice with the aid of a jury, and that his judgment was rendered upon a verdict, in no manner affects the right and duty of the supreme court to hear the case on the allegations and proofs *de novo*, and determine upon the same according to law and the equity and right of the matter.

To hold, according to some of the arguments made at bar, either that the act of Congress of 1823, ch. 24, is unconstitutional and void, or that there could be no civil jurisdiction conferred upon justices of the peace for amounts to exceed $20, because of the right of parties to demand the trial by common-law jury of all amounts exceeding that sum (which jury the act of 1823 does not supply), would be to declare, as the matter of jurisdiction is now limited in this District by the act of Congress of February 19, 1895, that there is no available remedy for parties where the amount claimed to be due, or the value of the property desired to be recovered exceeds $20 and is not more than $100—there being no original jurisdiction in the supreme court for amounts under $100. Such state of law, if it really existed, would be very deplorable; but there is in reality, according to my opinion, no such defective jurisdiction existing in this District.

The act of Congress of 1823, ch. 24, has been the subject of a variety of views and interpretations, as to its effect and proper construction, as will appear from the cases of Sherburne *v.* Semmes, 2

Cr. C. C. 446; Davidson *v.* Burr, 2 Cr. C. C. 515; Denny *v.* Queen, 3 Cr. C. C. 217; Smith *v.* Chase, 3 Cr. C. C. 348, and Fitzgerald
21 *v.* Leisman, 3 MacA. 6. It was held in those cases, so far as they show any definite ruling, that where a case had been tried by a jury under the act, there could be no re-examination of their findings; that they passed upon the whole case to the exclusion of all participation of the justice, and that an appeal did not subject their findings to re-examination by the appellate court. The right of appeal, however, was all the time in force, and the case on appeal was required to be heard on the respective allegations and proof of the parties *de novo*, as at present; and it is difficult to conceive of any reason why an appeal was not available, except upon some theory, not clearly defined, that the jury provided for by the act of 1823, was a common-law jury, within the meaning of the Constitution. This, as I have attempted to show, was not the character of the jury provided for by the act of 1823.

With all the perplexity, and apparent doubt and difficulty in the construction of the act of 1823, and of its application in practice, its constitutionality has never been seriously challenged, until very recently; but by a decision of the court below recently made, the act has been declared unconstitutional and void. This construction carries with it many serious consequences that should be avoided if possible. The act has been in force for near about three-quarters of a century; and during that time, as we may well suppose, a great many valuable rights have arisen and are dependent upon the validity of proceedings had under that act. To declare the act to have been unconstitutional and void from the commencement, with the consequent invalidity of all proceedings thereunder, would likely produce great trouble and confusion. With all due respect to the opinions of others, however, I am of opinion that the act is not unconstitutional; and that the right to trial by jury as contemplated by the Constitution, and according to the principles of the common law, is amply secure to either party by the right of appeal to the supreme court of the District; and such right of appeal and right to trial by jury on appeal, are necessary conditions to the lawful exercise of the civil jurisdiction of justices of the peace, "where the value in controversy exceeds twenty dollars." Indeed, the right of appeal and a trial *de novo*, both as to law and fact, are essential rights to both plaintiff and defendant in these magistrate's cases, and I cannot concur in any construction by which one party by his mere election of the mode of trial before the justice may cut off the right of appeal to the other. The statute in giving the right of appeal and requiring the case to be tried *de novo* by the appellate court makes no such distinction or discrimination. The right of appeal and a trial before a jury under the direction of a court of common-law jurisdiction, are the rights to be preserved and protected; and the trial by jury thus secured to both parties fully gratifies the constitutional requirement.

These are my views in respect to the exercise of the jurisdiction conferred upon justices of the peace in this District; and it follows from them that, in my opinion, the order of the court below passed

in the case of The United States on the relation of The Brightwood Railway Company *v.* Lewis I. O'Neal, discharging rule to show cause why a mandamus should not issue, and dismissing petition and refusing the mandamus, ought to be reversed, and the cause be remanded to the court below that the writ of mandamus might issue as prayed. But with respect to the order of the court below, passed in the case of Charles Hof *v.* The Capital Traction Company, overruling motion to quash writ of certiorari, and quashing part of proceedings before the justice of the peace, such order should be reversed, and the petition for the writ of certiorari be dismissed, for the reason that an appeal from the judgment of the justice of the peace would furnish to the defendant the appropriate remedy for any grievance it might have by the judgment of the justice.

22 WEDNESDAY, *February 17th, A. D.* 1897.

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY. } No. 632. January Term, 1897.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the order of the said supreme court in this cause refusing to quash the writ of certiorari therein issued to the justice of the peace and quashing the proceedings had before the justice of the peace subsequently to the joinder of issue in the cause before him pending be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said supreme court with directions to quash said writ of certiorari, and for such further proceedings in the premises, if any, as may not be inconsistent with the opinion of this court.

Per Mr. JUSTICE MORRIS.

February 17, 1897.

Dissenting, Mr. Chief Justice Alvey.

23 THURSDAY, *February 25th, A. D.* 1897.

CHARLES HOF, Appellant,
vs.
THE CAPITAL TRACTION COMPANY. } No. 632.

Mr. J. S. Flannery, of counsel for the Capital Traction Company, prayed the court for a writ of error to remove said cause to the Supreme Court of the United States. Whereupon it is ordered that counsel for the respective parties be allowed to file briefs in support and in opposition thereto.

24 UNITED STATES *ex Rel.* THE BRIGHTWOOD R'Y CO. *vs.* LEWIS I. O'NEAL, } No. 601.

and

CHARLES HOF, Appellant, *vs.* THE CAPITAL TRACTION COMPANY. } No. 632.

Applications for Writ of Error to the Supreme Court of the United States.

The principle involved in these cases is one of more than ordinary importance, and it is therefore desirable that it should be finally settled by the Supreme Court of the United States if there be any way by which it can be taken to that tribunal of last resort; but we are not able to perceive any ground upon which a writ of error can be allowed under the decisions of the Supreme Court. It is true it is not for this court to decide the question of jurisdiction of the Supreme Court or in what case a writ of error will lie; but it should at least appear that the case is reasonably within some principle upon which the writ of error can be allowed to justify this court in allowing the writ and sending the case to the Supreme Court; but, while we feel constrained to refuse the allowance of the writ, the party making the application for it can apply to one of the justices of the Supreme Court for the writ, and the order that we now pass will in no manner prejudice the right. The writ of error is refused.

Endorsed: No. 601. U. S. *ex rel.* Brightwood R'y Co., appellant, *vs.* Lewis I. O'Neal; and No. 632. Charles Hof, appellant, *vs.* The Capital Traction Company. Opinion of the court, per Mr. Chief Justice Alvey, on petition for writ of error. Court of Appeals, District of Columbia. Filed Mar. 9, 1897. Robert Willett, clerk.

25 TUESDAY, *March 9th, A. D.* 1897.

CHARLES HOF, Appellant, *vs.* THE CAPITAL TRACTION COMPANY. } No. 632.

Upon consideration of the appellee's petition for a writ of error to remove the above-entitled cause to the Supreme Court of the United States, it is by the court now here ordered that said petition be, and the same is hereby, denied.

Per Mr. CHIEF JUSTICE ALVEY.

March 9, 1897.

26 In the Supreme Court of the United States.

THE CAPITAL TRACTION COMPANY, Plaintiff in Error,
vs.
CHARLES HOF.

Petition for Writ of Error.

To the Supreme Court of the United States:

The petition of the Capital Traction Company, a corporation duly organized under and by virtue of several acts of Congress and doing business in the District of Columbia, respectfully shows as follows:

In an action at law in the Court of Appeals of the District of Columbia, at a term lately held in the city of Washington, D. C., said court rendered a judgment against this petitioner and in favor of one Charles Hof in a cause in which said Hof was appellant and said petitioner was appellee. Your petitioner complains that a great wrong and injustice has been done in the said cause by said court, as appears by the record thereof, and your petitioner further complains that said court erred as follows:

1. By holding that the act of Congress of March 1, 1823,
27 wherein provision is made for "jury" trials in courts held in the District of Columbia by justices of the peace, is a valid statute, thereby depriving the petitioner of its right to a trial by jury in said cause, wherein is involved more than $20, to wit, the sum of $300.

2. By holding the form of trial provided by said act of March 1, 1823, to be constitutional, whereby your petitioner is in danger of being deprived of its property without due process of law and will be denied the equal protection of the laws.

Wherefore your petitioner prays that a writ of error may issue from this honorable court to the Court of Appeals of the District of Columbia to review the judgment of said court in said cause.

ENOCH TOTTEN,
Attorney for Petitioner.

The "record" in Court of Appeals is hereto attached.

E. T.

28 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Court of Appeals, before you or some of you, between Charles Hof, appellant, and The Capital Traction Company, appellee, a manifest error hath happened, to the great damage of the said appellee, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected

and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

MELVILLE W. FULLER,
Chief Justice of the United States.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 3, 1897. Robert Willett, clerk.

29 Know all men by these presents that we, The Capital Traction Company, as principal, and George T. Dunlop, as sureties, are held and firmly bound unto Charles Hof in the full and just sum of five (5) hundred dollars, to be paid to the said Charles Hof, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a term of the Court of Appeals of the District of Columbia, in a suit depending in said court between Charles Hof and The Capital Traction Company, a corporation, a judgment was rendered against the said The Capital Traction Company, and the said The Capital Traction Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles Hof, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said The Capital Traction Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea

good, then the above obligation to be void; else to remain in full force and virtue.

THE CAPITAL TRACTION COMPANY,
By G. T. DUNLOP, *President.* [SEAL.]
GEO. T. DUNLOP. [SEAL.]

Sealed and delivered in the presence of—
—— ——.

Approved by—
MELVILLE W. FULLER,
Chief Justice of the United States.

[Endorsed:] No. 632. Charles Hof, appellant, *vs.* The Capital Traction Company. Bond on appeal to the Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Apr. 3, 1897. Robert Willett, clerk.

30 UNITED STATES OF AMERICA, *ss:*

To Charles Hof, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein The Capital Traction Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this third day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

MELVILLE W. FULLER,
Chief Justice of the United States.

Service accepted this 3rd day of April, A. D. 1897.
D. W. BAKER,
Attorney for Charles Hof.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 3, 1897. Robert Willett, clerk.

31 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 30, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Charles Hof, appellant, *vs.* The Capital Traction Company, No. 632, January term, 1897, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 20th day of April, A. D. 1897.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,585. District of Columbia Court of Appeals. Term No., 372. The Capital Traction Company, plaintiff in error, *vs.* Charles Hof. Filed May 8th, 1897.